



NATIONAL SENIOR CERTIFICATE EXAMINATION  
NOVEMBER 2013

**BUSINESS STUDIES: PAPER II**  
**MARKING GUIDELINES**

Time: 2 hours

100 marks

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**These marking guidelines are prepared for use by examiners and sub-examiners, all of whom are required to attend a standardisation meeting to ensure that the guidelines are consistently interpreted and applied in the marking of candidates' scripts.**

**The IEB will not enter into any discussions or correspondence about any marking guidelines. It is acknowledged that there may be different views about some matters of emphasis or detail in the guidelines. It is also recognised that, without the benefit of attendance at a standardisation meeting, there may be different interpretations of the application of the marking guidelines.**

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- The following aspects may be considered when marks are allocated in this paper:
- Format:
  - The **CORRECT** format for each question must be used, i.e. Business report.
  - Where applicable, include an introduction and conclusion.
  - Use headings and sub-headings where appropriate.
- Terminology: Correct Business terminology should be used.
- Content: Must be sufficient to cover all aspects of the question.
- Substantiation: Justification for statements made.
- Application to case study/context.
- Creative problem solving rather than just giving theoretical facts.
- Synthesis and sequencing.

**QUESTION 1      LO 2 AND LO 3****Entrepreneurial Qualities and Forms of Ownership****(max 35 marks)****Entrepreneurial qualities:****(Max 20 and then 15 for Forms of Ownership)**

- Visionary – believed they could do something that no-one else had succeeded in doing before them.
- Creative thinkers who challenge the conventional ways of doing things, innovating different aspects of traditional businesses such as products, methods and marketing campaigns.
- Risk takers with a positive attitude who take chances by devoting their time, money and other resources to something they believe will work.
- Leaders that persuaded others to buy into their dream and helped them to realise it.
- Independent spirits: like to be in control and are internally motivated.
- Perseverance and commitment: work hard until success is achieved.
- Opportunists – see an opening and use it to achieve goals.
- Ability to recognise shortcomings and then find the right people to fill the gaps.
- Expertise, knowledge and skills to make the business a success. These may refer to the following: Ability to plan, organise and coordinate resources, implement strategies and plans, evaluating and taking corrective measures.
- It is important that entrepreneurs have a market-awareness in order to identify the needs of the target market and then ensure these are satisfied.
- Teamwork and the ability to motivate people will enhance the success of the business.
- The entrepreneur has to have the ability to communicate the decisions taken in a clear manner as it is impossible for him to perform all tasks. Delegation is critical to ensure success.
- Considering that the business is established with the aim of making a profit, it is important that the entrepreneur has solid financial abilities.

**Forms of Ownership****(Max 20 and then 15 for Entrepreneurial qualities)**

**VERY IMPORTANT – If learners only do characteristics and do not explain how it leads to success or failure – max 8 marks**

**Some of the factors which may impact on the success or failure of the business will include:**

**Formation procedures**

The more legal formalities involved in starting the business, the more expensive, difficult and time consuming it will be to establish it.

**Legal persona and liability**

The business obtains legal persona when it is registered. When the business has legal personality, it offers the **owners** limited liability because the business can sue and be sued in its own right and therefore owners do not stand the chance of losing their personal possessions.

**Continuity (lifespan) of enterprise**

A business will only have continuity of existence if it has legal persona (is a legal entity) apart from the owners. If there is continuity, it means that a change in ownership (e.g. the death or retirement of one of the owners or the addition of a new owner) does not affect the existence of the business and therefore increases the possibilities of success for the business.

**Tax implications**

The progressive tax system applies to individuals in South Africa. This means that the **higher the income, the higher the tax percentage** (to a maximum of 40% in 2012/13 tax year) that applies.

The owner of a sole trader and the partners in a partnership are taxed on their personal income/profits from the business and could be taxed up to that maximum of 40%. Therefore, if a sole trader and the partners receive a substantial amount of profit, they will be taxed more than a CC and company.

### **Management/control aspects**

The owner of the business must decide if he/she would prefer to keep control over the management of the business.

- In a sole trader, partnership and close corporation the owners are usually involved in the day-to-day management of the business.
- In a company, the shareholders elect the Board of Directors who then manages the business.

### **Capital requirements based on the size of the business and nature of products/services**

The size of the business will largely determine the amount of capital required. In addition, the type of product to be manufactured and/or sold, or the service that will be rendered may also impact on the capital requirements.

### **Different forms of ownership to consider as well as the factors that may contribute to the possible success or failure of the undertaking**

#### **Sole Trader**

##### **Number of owners**

There is only one owner in a sole trader. This could potentially contribute to both the success and/or failure of the business.

The positive aspect in having only one owner is:

- The ability to make quick decisions which gives him/her flexibility to adapt to changing conditions;
- This also lowers the risk of lost opportunities if he/she has to first consult with other owners.
- The owner knows that they will get all the profits, so they will be more motivated to be successful (i.e. the owner will be conscientious).

Being a sole trader, however, could also pose certain problems that could increase the chances of failure. Think about the following:

- The sole trader is only one person that can contribute capital (either own or borrowed) and this limits both the expansion and growth of the business.
- In terms of management, the owner relies on his/her own initiative and does not always have somebody to discuss important decisions or alternatives with.
- The owner may also not have someone to take over if he/she is ill or goes on holiday – this could lead to management problems being experienced and may increase the possibility of failure.

##### **A sole trader is easy to start**

In fact, there are no requirements or procedures to follow in order to establish a sole trader. This limits costs (expenditure) and may increase the chances of success.

##### **Legal personality and liability**

A sole trader cannot be registered as a business with a separate legal persona from the owner. The owner therefore has **unlimited liability** for the debts of the business, i.e. his/her personal belongings can be lost if the business fails and this may limit the owner's risk taking behaviour.

## **Tax**

The owner has to pay the tax in his/her personal capacity on all profit taken from the business. Progressive personal income tax scales are applied, i.e. the higher his income, the higher the percentage tax to be paid. This means that the owner has to make provision for the tax by reducing the profits he/she can reinvest in the business as capital and this limits potential for growth.

## **Partnership**

### **Number of owners**

There is a minimum of two and usually a maximum of twenty partners in a partnership (but Companies Act (2008) allows for more).

- This makes it possible for more people (owners) to contribute capital and thus the business can grow and expand more than a sole trader is able to.
- However, having a maximum number of partners means that capital is limited and this limits the growth (and success) at the same time.
- All partners are usually actively involved in the management of the business and therefore productivity can improve because of division of labour. Each partner is performing the activity in which he or she is an expert.
- More than one person can also decide on important issues and because two heads are better than one, it may improve the chances of success of the business.
- However, all partners have to agree before a decision can be taken, i.e. slow decision-making may mean lost opportunities and a lower chance of success.

### **Formation procedure**

The only formation procedure required for a partnership is a **Partnership agreement/Partnership articles** and this can be entered into verbally although it is preferable to do in writing. In fact, it could even be a tacit (implied) agreement. It is a contract defining the terms and conditions agreed upon by the partners. This lack of a formal establishment procedure makes it easy and cheap (no major expenses) to start a partnership and there may therefore be more capital available to buy inventory or equipment needed which improves the chances of success.

### **Competitive position**

Forming a partnership can eliminate competition between smaller sole traders. This means the new partnership is in a better competitive position and improves the chances of success of the business (especially if it combines different skills from the two sole traders, e.g. two small micro lending businesses combine where the one sole trader is an excellent financial brain and the other a brilliant marketer).

### **Legal personality and liability**

A partnership cannot be registered as a business with a separate legal persona from the partners/owners.

- This results in partners having unlimited liability and this may motivate partners to work harder to make the business successful.
- On the other hand, it could mean that partners are scared that if one makes a mistake, all have to pay because partners are **jointly and separately** responsible (i.e. unlimited liability), for the debts of the business. This could make partners over-cautious and opportunities could be lost.

### **Continuity of existence**

The chances of success in a partnership are further limited by the fact that the business does not have continuity of existence, i.e. the partnership must be dissolved when one partner dies or retires or if a new partner joins.

**Tax**

Each partner pays tax on his personal income, i.e. the more profit he gets, the higher percentage tax the individual partner must pay (progressive tax at a maximum of 40% in 2012/13 tax year). The same tax law applies in a partnership as in the sole trader and therefore the same will be true here about possibilities of success or failure.

**Close Corporation****Number of owners**

There is a minimum of one owner and a maximum of 10 members in a CC. This could potentially contribute to the success of the business as there could be more capital available than a sole trader.

**A CC is easy to start**

Although the new Companies Act does not allow for new CC's to be started from scratch, it is still possible to buy a shelf CC and just complete a CK2 to change ownership. These limited costs (expenditure) may increase the chances of success.

**Legal personality and liability**

The CC is a registered legal entity apart from members. Members have limited liability, provided the word CC is always used when entering transactions **AND** provided that there is not more than 10 members for a period of longer than 6 months. If these two conditions are not met, members' limited liability falls away. CC may raise capital in its own name thereby increasing capital and possible success.

**Continuity of existence**

CC has continuity of existence, in other words, a member may sell his interest in the business (with the consent of other members) or a new member may join and the continuity of the CC is not affected.

**Tax**

The CC as a business pays income tax. The rate at which a CC pays income tax is at a fixed percentage of 28% on all profits (in 2012/13 tax year). Distributions to members are taxed at a further 15%.

**Company**

**The Companies Act No 71 of 2008 has replaced Companies Act No 61 of 1973 and therefore the information regarding Companies as was correct under the previous act will no longer be considered as correct in this question.**

**Number of owners**

**Private Companies [(Pty) Ltd]** under the 2008 Act is similar to the Private Company that could have been established under the 1973 Act, but the ownership is no longer limited to 50 shareholders. Ownership is unlimited. Private Companies will, however, continue to restrict transferability of the shares. **Public Companies [Ltd]** under the 2008 Act require only one shareholder, as opposed to the previous Act, where a minimum amount of seven shareholders were needed.

**A Company is relatively difficult to start and manage**

One or more people may start (incorporate) a Profit Company. Incorporation of a new company is done when Notice to Incorporate (inform the Commission of the intent to register a company) and the Memorandum of Incorporation – MOI (a detailed document providing all the information that were included in the Memorandum and Articles of Association under the previous Act.

It therefore sets out the rights, duties and responsibilities of all shareholders, directors and any other relevant officers in relation to the company) are filed with the Commission. Also refer to the fiduciary duty, duty of care and skill and corporate governance in this respect which complicates the running of a company.

### **Legal personality and liability**

The Company is a registered legal entity apart from shareholders. Shareholders have limited liability for the debts of the company.

### **Continuity of existence**

A Company has continuity of existence. This means if shares are sold between shareholders, the continuity of the business is not affected.

### **Tax**

The company as a business pays income tax at a fixed rate of 28% on all profits (2012/13 tax year). A dividends tax of 15% is charged on distributions to shareholders.

### **Advantages of a Company – improving opportunities to succeed**

- The company can raise more capital considering that there is no limit on the number of shareholders. This allows for better opportunities to expand the business.
- The company is a legal entity. This means that the company may enter into contracts in its own name and shareholders will not be held liable for the debts of the business.
- Limited liability for shareholders – they can only lose the capital invested in the business (personal belongings are not at risk).
- A company has continuity of existence – the existence of the business does not depend on the life of shareholders.

### **Disadvantages – improving chances of failure**

Relatively complicated and expensive formation procedure.

**(max 35 marks)**

### **Ethics**

In broad terms, **ethics** can be described as the human values that describe how one should live when keeping in mind what is seen as 'correct' behaviour.

Over the past few decades, **business ethics** has developed as a field in its own right. One of the reasons for this phenomenon of business ethics is a growing understanding that business transactions do not take place in a vacuum, but that there are always implications for stakeholders (both individuals and groups). This understanding of ethics will guide the entrepreneur's actions to implement plans taking into account that the financial bottom-line – although very important – is not the only criterion to determine business success or failure. Different environmental dimensions such as the economic, political, legal, technological, demographic, social, governmental and regulatory environments impact on organisations and businesses as well as on individual jobs.

### **Ethical Theories**

There are many different theoretical approaches to ethics. These may include:

**Consequence based theories** states that it is the consequence of an action that determines whether the action is right or wrong. The only way to judge if behaviour is 'right', is to look at the consequence of the action. If the consequence is positive, then there cannot be anything wrong with the action.

According to **Principle based theories** (Deontological is also based on predetermined rules) one's principles or values will determine whether the action is right or wrong. The consequences have no influence and there are no exceptions to the rule, e.g. it is always unethical to cheat regardless of the consequence.

**Narrative based theories:** Different **narratives**/stories are used to complement each other in order to lead to an understanding of the difference between right and wrong.

Other theories such as Ethical egoism, utilitarian and virtue based theories and any other valid theories will be accepted and given credit.

Regardless of the ethical theory supported, Moral **Absolutism** vs. Moral **Relativism** need to be addressed.

- **Moral Absolutism** states that there is only one ethical solution to any problem.
- **Moral Relativism** on the other hand believes the solution to the problem at hand will depend on the situation and who is involved. This means that there can be more than one 'moral' solution to a problem, depending on different cultures for example. Obviously from this it will follow that due to values differing from person to person and from society to society, it will become difficult to set up a universal code of ethics.

Although it is very difficult, and some may argue, almost impossible to find a solution to a problem that will be viewed by all as 'the best for the situation' it may be useful to keep some basic guidelines in mind when making decisions.

Business Ethics may be described as the study of how personal values and principles are applied in a business situation.

**Some basic questions** a manager could consider when making a business decision:

- **What does the law say and do we agree with this law?** In some countries it may be legal to give large gifts or pay to ensure the desired end-result (i.e. to give what we would term 'bribes', but known as 'smoothing or go-between' payments in some cultures), but not in South Africa. Jack was correct in walking away from this request.
- **What about choices regarding economic and social issues not covered explicitly by legislation or where the legislation is not enforced?** Is it acceptable to cause levels of air pollution in a third world country where there is no legislation on pollution? Is it acceptable to use child labour if the child is willing and sometimes desperate to work because he or she is the breadwinner? This last issue is a very real one in South African where HIV/Aids has left many children parentless. Is it acceptable to charge the high interest rates some micro lenders charge?
- **The issue of self-interest vs. the interest of the business also raises some ethical dilemmas.** Jack could have improved the chances of success for his business if he did not allow his personal ethics and values to stand between right and wrong.

Some **ethical issues** in the corporate world may include:

Employee **conflict of interest** may occur on many levels such as:

- A moral conflict, e.g. a Muslim employee being asked to charge people interest;
- A conflict of interest where an employee in Jack's Micro Lender has a friend or family in a position that could bring an unfair advantage to the business.

Inappropriate **gifts** may be:

- Inappropriately large and can therefore be seen as constituting a bribe;
- Inappropriately given to a potential decision maker with the intention to swing his/her decision or kickbacks (receiving or offering compensation for contracts);
- Inappropriate as it may be linked to sexual harassment – for example, a senior male employee giving a married female employee jewellery, perfume or other gifts of that nature.

**Unauthorised payment** may include, but is not limited to: Fraudulent invoices or payment requisitions, forged signatures (a huge issue when it comes to encrypted and electronic signatures), unauthorised electronic payments, skimming accounts (transferring small, seemingly insignificant amounts from customer's accounts on the assumption that they will not notice).

**Affirmative action** aims at redressing issues of the past. It is an attempt to rectify past moral injustices and is a necessary part of the healing and moving forward of South Africa as a democratic country. But in some cases, it is being taken so far that it leads to 'reverse discrimination' where well qualified people find it impossible to find jobs due to being white.

**Internet, email and cellphone issues.** With modern communication methods, come modern moral dilemmas which range from employees visiting pornography and other questionable websites to forwarding morally corrupt or damaging emails and SMSs (e.g. Spreading false rumours, forwarding compromising photos or confidential information). Other means such as Mix-it, blogs and Facebook (and the countless other similar tools) also have the potential to destroy reputations and disseminate damaging information.

**Stealing from the business.** Taking stationery from the business, making private phone calls.

Firing an employee for **whistle-blowing**. Whistle blowing refers to a situation where an employee reports unethical behaviour to management.

Consider the ethical consequences of the following actions:

- Divulging confidential information or trade secrets (insider trading);
- Terminating employment without following proper procedure;
- Some advertising issues which may include sexually overt advertising material during family viewing time on TV;
- Tax evasion which refers to not disclosing all income or lying about income (which differs from tax avoidance where one applies legitimate tax deductions).

### **Why business ethics?**

Adam Smith (a well-known economist), stated that the only responsibility of a business is to maximise profits based on the principles of demand and supply, albeit obviously within the constraints of the law. If this is, however, the only responsibility of the business, there are obvious negative implications and businesses should incorporate mechanisms to regulate the impact of their actions on society.

There is a growing awareness that employees are more productive and creative if they find their work meaningful and if they are able to maintain a healthy balance between a professional and personal life. This may provide an incentive to the business to implement programs that will help employees to achieve this. As a result the business acts more ethical by looking after the well-being of their employees. This therefore relates to the popular argument that the best way to serve one's own interest is to take the interests of others seriously. Following the logic of 'putting the customer first', serving the interests of all stakeholders will ultimately have the most beneficial effects on the business.



Enabling conditions are created when the business does more than merely staying within the letter of the law, which is not always sufficient. Businesses have to take into account the needs and requirements of all its stakeholders. For example, bad publicity can have a negative impact on the business and harming the environment may affect the long-term sustainability of the business. In short, the business has to play according to the written and unwritten rules, which will result in enabling conditions for the business to perform better.

The vast majority of South Africans would classify themselves as being religious. For those who are really committed and practising a particular religion, it is clear that their actions will have a wider impact on role-players outside of the religious institution, including that of the business environment. This may provide the incentive to the manager/owner to act in an ethical manner or to embark on ethical programmes.

In the context of deregulation (removing restricting laws), businesses need to demonstrate that they can act as responsible citizens without being forced to do so. It is therefore in the interest of businesses to introduce ethical programmes to ensure that it can continue to operate without external interference.

In this regard we also have to keep in mind that in today's environment businesses are becoming increasingly powerful, in many cases more powerful than governments. The business should therefore act in a responsible manner by contributing to create a 'good' society. For example, before introducing the Skills Development Act, the South African Government tried to get businesses to voluntarily share the (moral) responsibility of training and up-skilling both employees and others in the community. But the rate of change did not impact significantly on unemployment, as businesses were loath to spend money without an identifiable benefit to them. Ultimately, it has now become law and is slowly getting buy-in from businesses and affecting change.

### **Levels of business ethics**

There are different levels at which one may debate business ethics: These levels range from topics impacting on the individual employee or consumer to issues impacting on the business, the entire profession, society as a whole and even at government level.

#### **Individual level**

- To cheat on an expense account
- To call in sick when one is not (business loses many days productivity every month due to false illness)
- To accept a bribe
- Plagiarism – Are you aware of the 'Chippy Schaik debacle' ...?

#### **Organisational level**

- To ask an employee to perform an unethical or illegal act to earn profit.
- To pressure individuals or groups to overlook wrongdoings of their peers in the interests of business' reputation or image.

Business ethics at a **Professional** or **Association level** results in having to refer to a Code on Ethics for guidelines on conducting business, e.g. PRISA's (Public Relations Institute of South Africa) Code of Ethics. Some questionable actions at this level may include:

- An accountant advising a client to deduct questionable items for tax purposes, e.g. claiming a business car allowance when using the vehicle for personal use.
- A lawyer offering a plea bargain when the result would be beneficial to his career and not necessarily for his client.

- A medical doctor risking harmful side effects for the patient when he writes a prescription to gain favour from a pharmaceutical company.
- A management consultant advising a client to buy or take over a business that conducts illegal business transactions

Laws, norms, customs and transactions differ between **societies** when governing the acceptability of actions.

- 'Go between' payments may be accepted in one society, but not in another.
- Trading/sports on religious holidays.

**[50]**

**LOWER ORDER THINKING RUBRIC (60% WEIGHTING)**

CRITERIA	0	1	2			MARKS
<b>Format</b>	Not meeting the correct standard	Partially correct format	Correct format			
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>		
<b>Terminology</b>	No use of business terminology	Isolated use of business terminology	Good use of business terminology	Outstanding use of business terminology		
<b>Content (number of relevant facts)</b>	Maximum 50 facts. Divide by 2 to get mark out of 25. Marks are inter alia given for mentioning the fact, explanations of facts or statements, relevant examples; expansion of acronyms NOTE: Listed facts that are <b>not explained</b> = max 4 marks (8 facts).					
<b>Sub-Total</b>						<b>/30</b>

**HIGHER ORDER THINKING RUBRIC (40% WEIGHTING)**

If all SECTIONS have not been completed, the judgement is based on **the amount of expected** information. For example: A candidate substantiating one section well, but not answering the other cannot qualify for a 'majority of statements' mark.

CRITERIA	0	1	2	3	4	MARK
<b>Substantiation (justification for statements made)</b>	No attempt at substantiation.	Very limited substantiation.	Less than half of the statements are substantiated.	The majority of the statements are substantiated.	The majority of the statements are thoroughly substantiated showing breadth and/or depth of understanding.	
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	
<b>Application to context/industry</b>	Superficial reference based on the case study/context given. (Just keep mentioning the name of the business repeatedly without relevant examples)	Continuous reference is made to the case study/context given with some applicable examples given.	Continuous reference is made to the case study/context given with <b>several</b> examples that are <b>fully integrated</b> into the answer.	Examples are relevant to the case study/context given and <b>fully integrated</b> into the response showing understanding of the issues at hand. <b>Reference is made</b> to current affairs.	Examples are relevant to the case study/context given and <b>fully integrated</b> into the response showing understanding of the issues at hand. Current affairs are <b>fully integrated</b> into the response.	

	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	
<b>Creative Problem Solving</b>	No understanding of the problem and no solution given.	Identification of the problem and an incorrect solution suggested.	Identification of the problem and a poor solution suggested.	Understanding of the problem with ONE solution which is not explored in depth.	Understanding of the problem with MORE THAN ONE solution discussed in limited detail. <b>OR</b> Understanding of the problem, with ONE viable solution discussed in depth.	Good insight and understanding of the problem with MORE THAN ONE solution of which at least one has to be discussed in depth.	Good insight and understanding of the problem with solutions offered which are fully discussed, showing breadth <b>and</b> depth of understanding.	
<b>Synthesis</b>	None of the criteria as listed below is met.	At least one of the criteria fulfilled.	Any two of the criteria fulfilled.	Any three of the criteria fulfilled.	Any four of the criteria fulfilled.	All five of the criteria fulfilled.	All six of the criteria are fulfilled.	
<p><b>1. Introduction – do not just re-write the question, but show an understanding of the 'link' between the topics.</b></p> <p><b>2. Conclusion – this should be a logical affirmation of the points raised.</b></p> <p><b>3. Flow of thought, i.e. paragraphs leading into one another.</b></p> <p><b>4. Integration of topics given in the question.</b></p> <p><b>5. Integration of question with other business related topics to enhance the quality of the answer.</b></p> <p><b>6. Arguments are developed.</b></p>								
<b>Sub-Total</b>								<b>/20</b>

<p><b>TOTAL</b></p> <p>_____ /30 + _____ /20 =</p> <p>_____ <b>50</b></p>
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**QUESTION 2      LO 1 AND LO 4****Labour legislation****(max 35 marks)**

1. The **Labour Relations Act 66 of 1995 as amended** came into effect on 11 November 1996, and is based on the New Constitution. The LRA provides the basic legal framework for the South African labour relations system. The main objectives of the Labour Relations Act are:

- to enforce the fundamental rights granted by section 23 of the Constitution
- to enforce South Africa's international obligations as a member of the International Labour Organisation
- to provide a framework for collective bargaining between trade unions and employers and
- to promote effective resolution of labour disputes through employee participation in decision-making in the workplace

The Act contains the basic rules and mechanisms that can be used to control communication, bargain or negotiate relationships between employers and employees.

The LRA will apply to Jack's Micro Lender, because the business does not fall under the National Defence Force, the National Intelligence Agency and the South African Secret Service.

The Act covers issues ranging from freedom of association, Trade Unions, strikes and lockouts, collective bargaining, dispute resolution to unfair labour practice including unfair dismissal. Jack may therefore not stop employees from belonging to trade unions.

In terms of the Constitution, employees and employers will be guaranteed certain rights, for example the right to fair labour practices, the right to strike and the right to engage in collective bargaining. These rights are guaranteed in the Constitution which is the highest law of South Africa. However, there are certain procedures that must be followed in order to strike, and the employees at Jack's Micro Lender have not followed these procedures, so their strike will not be protected.

**Unfair treatment in the workplace**

The LRA defines 4 kinds of treatment that amount to unfair labour practice.

- Unfair discrimination
- Unfair conduct
- Unfair suspension
- Failure to re-instate

Under the LRA an employee is regarded as **unfairly dismissed** when:

- An employer ends a contract of employment without notice to the employee.
- An employer refuses to allow an employee to return to work after maternity leave.
- Constructive dismissal takes place.
- An employee is dismissed for taking part in trade union activities.
- Employee is dismissed for taking part in a protected strike.
- Employee is dismissed for arbitrary reasons, e.g. race.
- Employee is dismissed for reasons related to pregnancy.

**Disputes about unfair treatment**

Disputes about all forms of unfair treatment should be referred firstly to conciliation, e.g. by the CCMA. If a dispute about unfair discrimination remains unresolved, it will then be referred to the Labour Court. If a dispute about the other kinds of unfair treatment remains unresolved, it can be referred to arbitration.

**2. Basic Conditions of Employment Act, 1997 (BCEA)**

The BCEA was put into effect by formal declaration on 1 December 1998 and aims to impact positively on the conditions of employment of over six million workers in South Africa. It is primarily aimed at improving the working conditions of vulnerable workers.

The BCEA specially addresses the problems of:

- Inadequate protection for vulnerable workers such as part-time, farm and domestic workers;
- The lack of mechanisms to set minimum wages for farm and domestic workers;
- Child labour;
- Exclusively long working hours, especially in areas such as transport and security.

Issues included in the Act:

- **Working hours**  
A maximum of 45 hours per week may be worked, with a meal interval after 5 hours of work. The maximum hours per day are 9 hours for a 5 day week and 8 hours for a 6 day week. Overtime should be organised by agreement with a maximum of 3 hours per day or 10 hours a week. Payment for overtime is at one and a half times the normal rate or by giving paid leave equal to the time worked.
- **Leave**  
21 consecutive days paid leave after every 12 months continuous employment is considered normal. Leave may not be converted into cash. Maternity leave is four consecutive months. Family responsibility leave of 3 days per year is allowed for reasons such as a family death, illness, etc.
- **Sick leave**  
30 working days per 36 month cycle is allowed. The worker at Jacks Micro Lender is entitled to the full 30 days even though he has only worked 1 year.
- **Public holidays**  
Employees must be paid for any public holiday that falls on a working day. If employees are required to work, they must be paid overtime at double rate or given time off.
- **Notice of termination of employment**  
1 week's notice must be given if less than a month has been worked, 2 weeks if less than a year and a month's notice if a year has been completed.
- **Deductions**  
Employers must deduct unemployment insurance, income tax, union fees and other amounts agreed upon, but may not deduct any money that has not been agreed upon by the employee.

**3. Skills Development Act (97 of 1998) and Skills Development Levies Act (9 of 1999)**

The South African Qualifications Authority (SAQA) Act was the result of a joint effort by the Minister of Education and the Minister of Labour in 1995.

The aim of the Skills Development Act is to:

- Use the workplace as a place of learning
- Improve the level of investment in education and training
- Ensure that quality training (accredited programmes) are offered
- Improve employment opportunities for disadvantaged people
- Encourage workers to get involved in training programmes

**4. Skills Development Levies Act**

1% of the total payroll is contributed by the employer. No money may be deducted from the employee's wage/salary. Money is administered by SETAs.

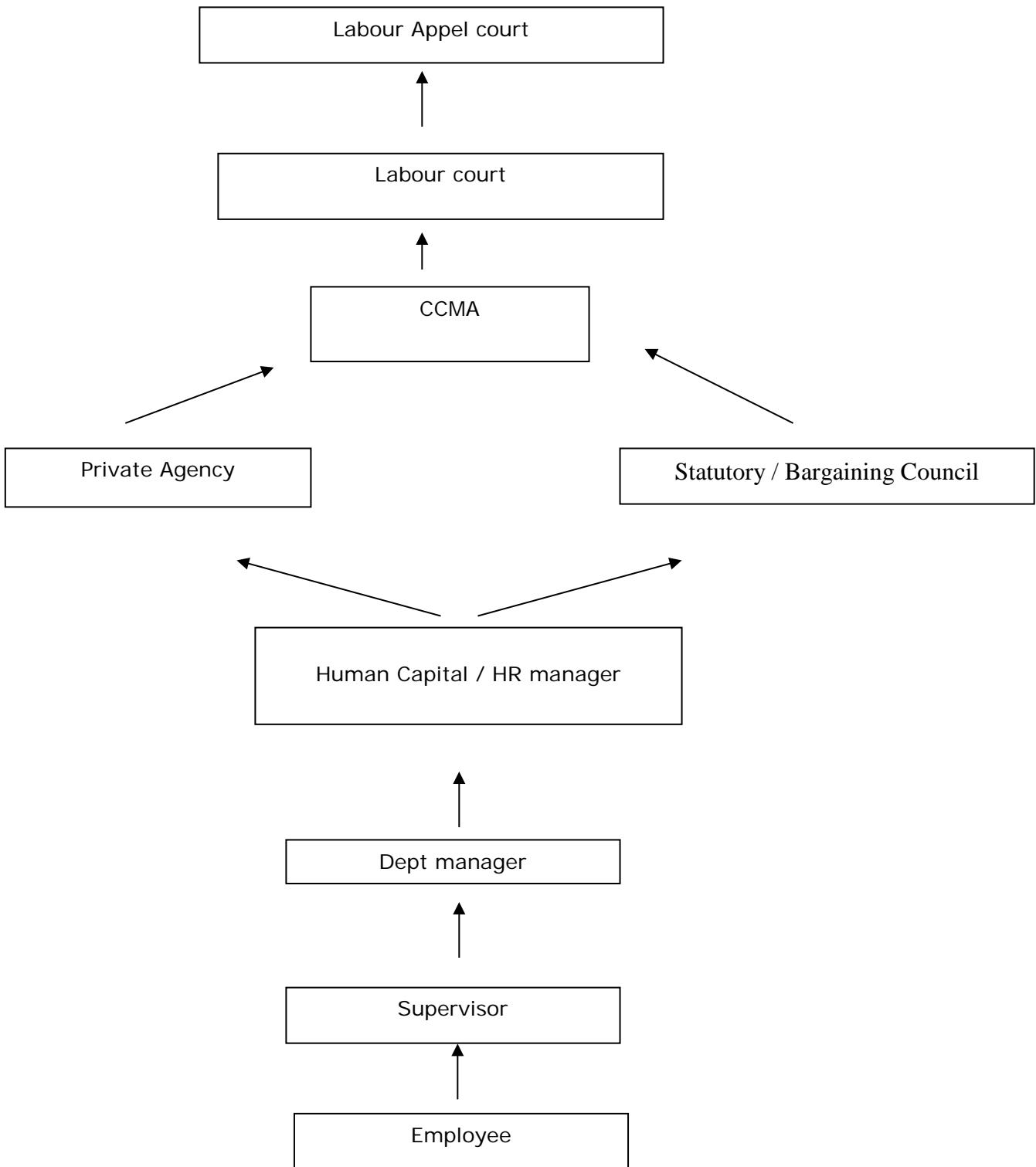
Each business sector has formed a Sector Education and Training Authority (SETA) to prepare training programmes, promote learnerships and control funds in that sector.

These SETAs consist of representatives from trade unions, employer's organisations, government departments and interested professional bodies. The SETA obtains funding from the skills development levies paid by all employers in businesses with a payroll of more than R250 000 p/a. This levy is currently 1% of the total payroll and is collected by SARS.

Each SETA must control and approve learnerships and Workplace Skills Programmes (WSP), provide funds to employers and trainers and ensure education and training is happening in their sector.

Employers are entitled to claim part of the Skills Development Levy back when providing skills development programmes.

**5 Discipline:**



**Reasons for Dismissal**

There are only three grounds on which a worker may be dismissed if the requirement of Substantive fairness is to be met:

- Misconduct
- For incapacity (if an employee cannot perform duties properly owing to (a) illness, ill health or (b) inability);
- For operational reasons e.g. retrenchment.



Procedural fairness refers to the correct procedure being followed during the dismissal.

### **Dismissal for misconduct**

Misconduct refers to a situation where transgression of a rule took place and may include various examples such as gross insubordination (defiance of authority), theft, dishonesty, substance abuse, intimidation, assault or fighting, lateness, absenteeism, abuse of sick leave or falsifying medical records and even abusive language. Obviously in many of the above mentioned instances it will not be appropriate to dismiss an employee for a first offence unless it is a serious offence.

Dismissal for misconduct is the last resort of an employer, when other measures to correct misconduct have failed or are pointless.

Each case should be judged on its merits and the employer should also take into account other factors such as the employee's circumstances (for example, length of service -known as tenure-, previous disciplinary record and personal circumstances) and the circumstances of the infringement itself (for example, if an employee was justifiably provoked to assault a colleague).

Dismissal for misconduct is **substantively** fair if:

- The employee broke a rule of conduct in the workplace;
- The rule was valid or reasonable;
- The employee knew of the rule or should have known of the rule; (Note the language issue if the employee's home language is different to the one the business operates in.)
- The employer applied the rule consistently; and
- Dismissal is the appropriate step to take against the employee for breaking the rule in stead of less serious action like a final written warning or a suspension.

**Procedural fairness** refers to the correct procedure being followed when an employee is disciplined. It includes amongst other:

- The employee must be notified of the reason for the disciplinary action (usually in writing).
- Although the disciplinary procedure needs to take place as soon as possible (no unnecessary delays), the employee must be given sufficient time to prepare himself for the disciplinary hearing.
- The employee has the right to state his case at the disciplinary hearing or he can be represented by a fellow employee, a Trade Union representative or in extreme and serious disciplinary procedures such as serious misconduct, a lawyer or other legal representative.
- If so required, the employee has the right to an interpreter.
- Any witnesses may be cross examined.
- The employee has the right to be informed of the outcome of the disciplinary hearing and
- To appeal should he wish to do so.

Employers must keep records of disciplinary action for each employee, stating the nature of the misconduct, the disciplinary action, and the reasons for the action. These should be based on Disciplinary Policies which the business will have in place, but it is important that these comply with the requirements of the LRA.

**Dismissal for incapacity**

Incapacity can be defined as the result of poor health (being incapable to perform) or due to unsatisfactory work performance. This poor performance due to incapacity should be distinguished from misconduct (i.e. transgression of a company rule) even though the employment contract will stipulate that the employee must perform duties to meet certain standards.

In the case of poor health on the side of the employee the employer should aim to accommodate the employee through sick leave or, if the poor health results in the employee not being able to perform regular duties, the employer should try to adjust duties or may even offer an alternative position.

Poor performance implies that work standards have not been met and may be dealt with in accordance with stipulations of the disciplinary code. However, before disciplinary action may be taken it must be established that the employee was aware of:

- a) expectations and
- b) how failure to meet these standards will be dealt with. In this regard, Trade Unions will attempt to ensure work standards are realistic and reasonable, and if standards are changed, the law requires the business to consult with Trade Unions before these changes are implemented.

Probation refers to a period where the new recruit works in the business and only after this period has been completed is the appointment confirmed. The reason for a period of probation is to allow the employer the opportunity to assess the performance of the employee before finalising the appointment. The period of probation should be reasonable (usually about three months) and during this time the employer has to evaluate the employee's performance and provide guidance and training should it not be satisfactory.

If the employer has assisted the employee to improve on performance that is below par, but the employee fails to meet the required standards, the employee will be given a hearing and may then be dismissed due to poor performance. Despite the fact that the dismissal occurred during the period that was clearly stipulated as a probation period, the employee will still have the right to appeal the dismissal decision.

The employer has the responsibility to ensure staff are given the opportunity to perform to the best of their abilities. This may include training and skills development offered by the employer, as well as supplying the correct equipment and tools, to help the employee to meet performance standards. Should the employee however fail to meet the pre-determined and clearly communicated standards, the employer may have reason to consider dismissing the employee based on poor work performance.

Disciplinary action due to poor performance must meet the following requirements to be seen as substantive (valid reason):

- Show that the employee failed to meet a performance standard
- Show that the employee was aware of the required standard
- Show that the employee was given an opportunity to improve performance (including training)
- Show that the reason for failing to meet the standard was investigated and that there is no other appropriate sanction for failing to meet this standard, i.e. that dismissal is the only option

In order to be procedurally fair:

- The employee must be notified of the reason for the disciplinary action (usually in writing).
- Although the disciplinary procedure needs to take place as soon as possible (no unnecessary delays), the employee must be given sufficient time to prepare himself for the disciplinary hearing.

- The employee has the right to state his case at the disciplinary hearing or he can be represented by a fellow employee, a Trade Union representative or in extreme and serious disciplinary procedures such as serious misconduct, a lawyer or other legal representative.
- If so required, the employee has the right to an interpreter.
- Any witnesses may be cross examined.
- The employee has the right to be informed of the outcome of the disciplinary hearing and to appeal should he wish to do so.

### **Dismissal for operational reasons (retrenchment)**

An employer may dismiss employees for operational reasons, but only if the employer has tried to avoid this as far as possible. This may include consultation and negotiations with employees or their representatives.

As soon as an employer considers retrenchment, he or she must start the consultation process and must notify the other side (employees and / or their trade union) in writing of:

- The reasons for the proposed retrenchment;
- The alternatives considered;
- The number of employees who are likely to be affected;
- The proposed methods of selection of jobs involved;
- The timing of the proposed retrenchment;
- Offers of severance pay; and
- Assistance offered / prospects of re-employment in the future.

To ensure consultation is genuine, an employer must respond to any suggestions from the other consulting party and explain reasons for disagreeing with that party. All parties must be allowed to make representation on any matter under consideration.

In many cases the business will offer training in something like entrepreneurship or other skills to enable the retrenched to be more employable. This is especially true when there are large scale retrenchments in an industry, making re-employment difficult.

### **Strikes, Industrial Action. CCMA and Trade Unions**

**(max 35 marks)**

Employees have the constitutional right to **strike** for the purposes of collective bargaining while the employers have the constitutional right to a lock-out of workers for disputes for which no other solution can be agreed upon. This should, however, be seen as the last resort as labour unrest is detrimental to the economy of any country.

- **A strike** is a temporary, collective refusal of employees to work in order to put pressure on the employer to agree to the demands of the workers, such as higher wages or improved working conditions. A single worker cannot strike as it will only be regarded as a strike if two or more employees participate in the action. These striking employees might work for the same or different employers, but they must act with a common **work-related** purpose. The reason for the strike action must therefore be to solve a grievance or dispute about a matter of mutual interest that concerns employees and employers.

The action can be a partial or complete refusal to work, for example, go-slow, work-to-rule or intermittent strikes (where employees stop and start the same strike over a period of time). It may also include overtime bans.

**Protected strikes**

Strike action can be protected or unprotected. Employees involved in protected strikes enjoy certain benefits which employees who engage in unprotected strikes do not have.

A During a protected strike:

- Employees may not be dismissed for going on strike. Employees may, however, be dismissed for misconduct during the strike, such as intimidation or violence.
- The employer cannot apply for a court interdict to stop the strike, but may apply for a court interdict to prevent unlawful action, such as damage to property or intimidation of working employees.
- The refusal to work is not seen as a breach of contract and the employer cannot claim damages for loss of production from striking workers.
- An employer does not have to pay employees participating in a protected strike, i.e. the 'No work, no pay-rule' can be enforced.

B Certain procedures need to be followed for a strike to be considered protected.

- Any collective agreement regarding dispute resolution procedures must be followed.
- If there is no agreed dispute resolution procedure then the procedures of the LRA must be followed:
  - The issue in dispute must be referred in writing to the CCMA, a bargaining council or a statutory council;
  - The CCMA or council must try to settle the dispute through conciliation within 30 days;
  - If this fails, the CCMA or council must issue a certificate saying that the dispute has not been resolved; and
  - At least 48 hours' notice in writing of the proposed strike must be given to the employer or seven days' notice if the state is the employer.

C A strike will not be protected if:

- A collective agreement specifically states that workers may not strike over the issue at hand;
- The correct procedures have not been followed or if the arbitration decision is ignored.
- The parties are engaged in an essential service.

**Reasons for strikes/lock-outs**

Strikes and lock-outs may be held over disputes regarding issues of mutual interest between the employee and employer and may include issues such as:

- Wage increases;
- A demand to recognise a trade union;
- Unhappiness regarding unilateral changes that the employer made to working conditions; and
- In sympathy with a protected strike by another party.

**Other forms of industrial action**

A Picketing

The LRA recognises the right to picket as follows:

- Only a registered trade union may organise a picket.
- A picket may be held at any place to which the public has access, e.g. outside the premises of an employer. Unions must obtain the employer's permission to picket inside the workplace, but the employer may not withhold this permission unreasonably.
- The picket must be peaceful.

**B Secondary action**

- Secondary action refers to employees striking in support of a strike by other employees.
- Secondary action will be protected if:
  - The main strike is protected;
  - The secondary strikers give seven days' notice to their employer.

**Lock-outs**

A **lock-out** is a refusal on the part of an employer to allow employees to continue to work unless they accept certain conditions of the employer. Employers can lock-out employees, which mean that they physically exclude employees from the workplace in order to force employees to accept a demand or offer of the employer that relates to the strike.

The Labour Relations Act tries to ensure that disputes are resolved as quickly as possible. One of the organisations that can assist in this is the **CCMA**. It provides for a basic two step procedure. **Step one** is conciliation while **step two** (arbitration, adjudication or industrial action) follows only when the first step is unsuccessful.

- **Conciliation** occurs when the parties in dispute get together with a neutral third party. The conciliator does not decide who is right or wrong, but tries to help the parties to reach an agreement. Conciliation can include **mediation**, i.e. making a recommendation to the parties.
- **Arbitration** occurs when the dispute is referred to a neutral third party who makes a decision about who is right. This decision is binding on both parties.
- If a dispute goes to the Labour Court instead of arbitration, it is known as **Adjudication**. A party can appeal against the decision of the Labour Court by going to the Labour Appeal Court (LAC) if leave to appeal is granted.

**Functions of trade unions and employer organisations**

A trade union is any number of employees in a particular undertaking, industry, trade or occupation associated together for the purpose of regulating relations in that undertaking, industry, trade or occupation between themselves or some of them and their employers or some of their employers.

The South African Constitution guarantees the principal of Freedom of Association. This affords employees the right to join a Trade Union of their choice and employers the right to join an employer's organisation.

With the exception of workers in the excluded categories, essential services, e.g. National Defence Force members, any worker has the right to join or form a trade union.

No employer may make it a condition of employment that an employee may not become a member of a trade union. An employer can be compelled to deduct trade union membership fees from the wages of an employee and to pay these over to the trade union. The law also gives the employee the right to engage in union action (provided certain conditions are complied with), to hold meetings at the work place and the employer may not prevent these actions from taking place.

The main aim of a trade union is to engage in collective bargaining with employers on behalf of the members of the union. The union will also advise and represent members on conditions of service, grievances and disciplinary issues as well as other labour relations issues.

The functions of a trade union can be summarised as follows:

- Protecting the rights of workers and ensuring fair treatment of members.
- Improving conditions of service/employment by addressing the following issues:
  - Salaries.
  - Employee benefits, e.g. leave, housing, medical, etc.
  - Job security.
  - Physical work environment (safety).
- Representing members in negotiations with employers.
- Representing employees in disciplinary issues, e.g. at a disciplinary hearing or in a labour court
- Advising employees on labour relations issues, e.g. procedures for retrenchment, promotion (interviews), etc.
- Striving to achieve industrial peace while influencing policies and decisions regarding labour issues.

**[50]**

**Total: 100 marks**

**LOWER ORDER THINKING RUBRIC (60% WEIGHTING)**

CRITERIA	0	1	2			MARKS
<b>Format</b>	Not meeting the correct standard	Partially correct format	Correct format			
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>		
<b>Terminology</b>	No use of business terminology	Isolated use of business terminology	Good use of business terminology	Outstanding use of business terminology		
<b>Content (number of relevant facts)</b>	Maximum 50 facts. Divide by 2 to get mark out of 25. Marks are inter alia given for mentioning the fact, explanations of facts or statements, relevant examples; expansion of acronyms NOTE: Listed facts that are <b>not explained</b> = max 4 marks (8 facts).					
<b>Sub-Total</b>						<b>/30</b>

**HIGHER ORDER THINKING RUBRIC (40% WEIGHTING)**

If all SECTIONS have not been completed, the judgement is based on **the amount of expected** information. For example: A candidate substantiating one section well, but not answering the other cannot qualify for a 'majority of statements' mark.

CRITERIA	0	1	2	3	4	MARK
<b>Substantiation (justification for statements made)</b>	No attempt at substantiation.	Very limited substantiation.	Less than half of the statements are substantiated.	The majority of the statements are substantiated.	The majority of the statements are thoroughly substantiated showing breadth and/or depth of understanding.	
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	
<b>Application to context/industry</b>	Superficial reference based on the case study/context given. (Just keep mentioning the name of the business repeatedly without relevant examples)	Continuous reference is made to the case study/context given with some applicable examples given.	Continuous reference is made to the case study/context given with <b>several</b> examples that are <b>fully integrated</b> into the answer.	Examples are relevant to the case study/context given and <b>fully integrated</b> into the response showing understanding of the issues at hand. <b>Reference is made</b> to current affairs.	Examples are relevant to the case study/context given and <b>fully integrated</b> into the response showing understanding of the issues at hand. Current affairs are <b>fully integrated</b> into the response.	

	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	
<b>Creative Problem Solving</b>	No understanding of the problem and no solution given.	Identification of the problem and an incorrect solution suggested.	Identification of the problem and a poor solution suggested.	Understanding of the problem with ONE solution which is not explored in depth.	Understanding of the problem with MORE THAN ONE solution discussed in limited detail. <b>OR</b> Understanding of the problem, with ONE viable solution discussed in depth.	Good insight and understanding of the problem with MORE THAN ONE solution of which at least one has to be discussed in depth.	Good insight and understanding of the problem with solutions offered which are fully discussed, showing breadth <b>and</b> depth of understanding.	
<b>Synthesis</b>	None of the criteria as listed below is met.	At least one of the criteria fulfilled.	Any two of the criteria fulfilled.	Any three of the criteria fulfilled.	Any four of the criteria fulfilled.	All five of the criteria fulfilled.	All six of the criteria are fulfilled.	
<p><b>1. Introduction – do not just re-write the question, but show an understanding of the 'link' between the topics.</b></p> <p><b>2. Conclusion – this should be a logical affirmation of the points raised.</b></p> <p><b>3. Flow of thought, i.e. paragraphs leading into one another.</b></p> <p><b>4. Integration of topics given in the question.</b></p> <p><b>5. Integration of question with other business related topics to enhance the quality of the answer.</b></p> <p><b>6. Arguments are developed.</b></p>								
<b>Sub-Total</b>								<b>/20</b>

<p><b>TOTAL</b></p> <p>_____ /30 + _____ /20 =</p> <p>_____ <b>50</b></p>
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